

PLANNING COMMISSION MEETING MINUTES OF MAY 22, 2006

2005-0889 - Appeal of a decision by the Director of Community Development denying a Tree Removal Permit for a Magnolia tree in the backyard of a site located at **1140 Andover Drive SD**

Gerri Caruso, Principal Planner, presented the staff report. She said that staff reassessed the subject tree considering the new findings in the recently adopted modified tree preservation ordinance. She said staff is still unable to make the required findings to grant the tree removal permit. Ms. Caruso said additional information from the applicant has been provided in a letter and placed on the dais tonight for the Commission's consideration. Ms. Caruso said that **Leonard Dunn**, City Arborist, is present to answer any questions. She said that staff is unable to make the required findings and is recommending denial of the appeal.

Chair Hungerford opened the public hearing.

James Bell, appellant, said the city arborists have been out to look at the tree twice and that he does not agree with the arborists. Mr. Bell referred to staff notes regarding issues noted by the appellant on page 4 and 5 of the report that said he could dig a trench, take out the concrete and replace the concrete with pavers. He said pavers would still result in an uneven patio surface from the tree roots. He said if he takes out the concrete and removes roots that the tree could live or die. He thinks the roots are large, but the arborist does not agree. He said one of the arborists said he did not think the roots were damaging the concrete foundation of the house. Mr. Bell said he does not know how the arborist could know this, but that he is uncomfortable not knowing. He said he has other work to do in the yard, replacing the lawn and the sprinkler system and that all of the work should be done at the same time. He said if he takes out all of the concrete and waits to see what happens he would have a lot of soil. He addressed the arborist suggestion for putting in a deck stating reasons why it would not be a good solution. He said this is a huge magnolia and only three of his neighbors can even see the tree and that the removal would only affect him and his wife. Mr. Bell said that the rise in the concrete has gotten worse in the past few months and the uneven concrete is dangerous for him and his wife.

Michael Bell, the appellant's son, referred to Attachment A, and said that he feels the tree meets a couple of the required findings. He referred to "b" and said that the tree represents a potential hazard due to the raising of the concrete slabs. He referred to "c" and said that this tree also "restricts the owner's ability to enjoy the reasonable use or economic potential of the property" and gave his reasoning. He said his father could have removed the tree and no one would have known, but he chose to go through the proper process to get approval. Michael Bell appealed to the Planning Commission that this tree presents a

hazard, and any kind of remedy of this would be risky because the uneven surface would still exist. He said at one time his parent's yard had a beautiful lawn and was suitable for entertaining, but that is no longer the case due to the tree roots. He said he is a real estate broker and feels that the tree does represent some economic obsolescence to the resale value of the home because at some point the tree will need to come out. He said they could spend \$30,000 to \$40,000 now to try to remedy the situation and then have to remove the tree eventually and spend that much money again.

Comm. Simons asked what the \$30,000 to \$40,000 would cover. Michael Bell said the amount is an estimate, but would include removal of the concrete, leveling and replacement of the surface, tree surgery to remove roots, bringing in additional soil to cover other roots, and probable removal of a gate to access the backyard to remove the concrete. Comm. Simons asked about the economic hardship concern, as he thought mature trees brought value to the lot. Michael Bell referred to Attachment A, "c" and said that he was referring more to the "reasonable use" of the property. He said that this tree has effected the yard making the yard not reasonably useful. He said the location and age of the tree have made the yard less useful.

Comm. Sulser referred to Attachment A, findings "b" and "c" and to Attachment E, page 2. Comm. Sulser asked James Bell about Attachment E, the applicant letter, which also argues that the tree has "insect and other damage." Mr. Bell said his tree surgeon was out to look at the tree and a large piece of bark fell off and had insects on the bark. Mr. Bell said the city arborist later looked at the tree and said the tree is sunburned. Mr. Bell said he understood the arborist's position, but that the arborist does not have to live with the tree in his yard.

Comm. Babcock asked Michael Bell when he referred to the "economic hardship" if that reference was regarding the removal of the concrete. Mr. Bell said the economic hardship is the concrete removal and also the large amount of landscaping than needs to be done. He said the yard is not useful, due to the tree. Comm. Babcock confirmed whether the tree is removed or not, the removal of the concrete will need occur. Michael Bell said if they retain the tree and relandscape the yard and then have to remove the tree then they are potentially throwing away good money and it would be more costly to remove tree at a later date. Comm. Babcock asked Michael Bell about the loss of economic potential for the house as she thought that mature trees increased the value of a home. Michael Bell said generally that mature trees increase the value, but if this home were sold, the new owner would need to find and pay for a remedy to the tree situation. James Bell added that this tree is too close to the house and if he sells the house he will need to divulge any problems, which would be this tree in this location.

Chair Hungerford commented that one of the conditions in the newly adopted modified tree ordinance was the addition of a criteria for a finding that "the tree

has outgrown its useful landscape value due to its inappropriate species, size and location, relative to existing structures on the property.” Chair Hungerford asked James Bell what his thoughts were. Mr. Bell referred to the plot plan and said the tree is too close to the house. Mr. Bell said he has always followed the city rules and gone through the permit requirements. He said if this tree were removed no one would know any difference and that he is sorry he was legal and went through the tree removal process. He said he was displeased that city staff came out to check the tree without phoning ahead of time, but he has had good relationships with several of the staff who have helped him with this process.

Comm. Simons asked Mr. Dunn about damage from the roots of magnolia trees, specifically about root barriers with mature trees. Mr. Dunn said magnolias and liquidambar have shallow roots. He said the random cutting of roots of magnolias is not advised, but selective cutting is possible. He added that magnolia roots are aggressive rooters and will grow towards favorable conditions. He said root barriers could possibly be used between the house and the tree, but not close to the trunk. He said most roots would be within the top 15 inches of the soil profile. Mr. Dunn said magnolias can take selective aggressive pruning and that the roots may be as big as a foot in diameter with many smaller roots.

Chair Hungerford asked Mr. Dunn to comment about trees outgrowing their landscape value due to size. Mr. Dunn said this tree is large and can be seen over the top of the house. He said he applauds the applicant for planting it far enough away from the house and for maintaining it well. Mr. Dunn said a tree this size has an ecological value of shading. Mr. Dunn said the yard is big, the tree fits the space, and it does not appear to him that it has outgrown the landscape value. He said he had offered some suggestions, i.e. a deck, that could make the yard more useful. **Trudi Ryan**, Planning Officer, referred to Attachment C, page 2, and said that the pictures show a view of the tree in the context of the backyard. She commented that the decision of whether the tree has outgrown the landscape value may be a subjective standard.

Chair Hungerford closed the public hearing.

Chair Hungerford commented that the Planning Commission has not had to apply the modified tree ordinance and that the finding of whether the tree has outgrown its useful landscape value is a “subjective standard.” He said he is a bit torn on how to apply this finding to this appeal. He said it appears to him that this is a large backyard, with a big tree that has gotten bigger than the owner intended, but whether it has outgrown its useful landscape value, he is not sure.

Comm. Babcock moved for Alternative 1 to deny the appeal and uphold the denial of the Tree Removal Permit. Comm. Klein seconded.

Comm. Babcock said this was a difficult decision, but she is unable to make the required findings to remove the tree. She acknowledged the financial hardship to redo the landscaping, but that after 49 years, there are expenses incurred in the upkeep a home. She said she believes the large tree is an ecological benefit and that this tree has another expected 40 years to its lifespan which will benefit Sunnyvale and future property owners.

Comm. Klein said he has the same issue with his home with a liquidambar pushing up sidewalks. He said the tree does benefit the community and the home value and the financial hardship is part of owning the tree. He said he is unable to make the required findings and will be supporting the motion.

Comm. Simons said he would be supporting the motion. He said there is some truth to what the applicant said when he said he wishes he had not gone through the tree removal process, but he said that people do notice when trees are removed without a permit. He applauded the applicant for going through the process. Comm. Simons is concerned that the City hold on to healthy tree stock. Comm. Simons said if the applicant begins the work by trenching or installing root barriers and finds that the tree is structurally unstable if the roots are removed, then the applicant should return to the City and deal with it on an administrative level. He agreed with other Commissioners that whether the tree is removed or stays that there will be costs incurred and that these are part of the maintenance and expenses.

Chair Hungerford said he would be supporting the motion as he thinks the tree still has useful landscape value.

ACTION: Comm. Babcock made a motion on 2005-0889 to deny the appeal and uphold the denial of the Tree Removal Permit. Comm. Klein seconded. Motion carried unanimously, 5-0.

APPEAL OPTIONS: This decision is final and is not appealable.